

TIFFANY & BOSCO, P.A

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Wells Fargo Bank, N.A.
 11-71070

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

In Re:

BK Case No.: 11-18889-mkn

Artemio Avila

Chapter 13

Debtor.

EX-PARTE APPLICATION FOR AN ORDER
PURSUANT TO 362(4)(A)(i) and (ii)

Wells Fargo Bank, N.A., Secured Creditor herein, ("Secured Creditor" or "Movant" hereinafter), requests from this Court an Order Confirming that the Automatic Stay of 11 U.S.C § 362 has not arisen with respect to the Debtor due to the multiple filings as evidenced below. This motion is supported by the following Memorandum of Points and Authorities.

MEMORANDUM OF POINTS AND AUTHORITIES

1. That on or about June 6, 2011, the above named Debtor filed this instant Chapter 13 Petition in Bankruptcy with the Court

2. Secured Creditor is the current payee of a promissory note dated February 25, 2008 in the principal sum of \$174,166.00 ("Promissory Note" herein), secured by Deed of Trust of same date upon property generally described as 3980 Timberlake Dr., Las Vegas, NV 89115, and legally described as follows:

1 LOT ONE HUNDRED SEVENTY (170) IN BLOCK TEN (10) OF WALNUT GROVE UNIT
2 2, AS SHOWN BY MAP THEREOF ON FILE IN BOOK 92 OF PLATS, PAGE 9, IN THE
3 OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA.

4 (“subject property” herein).

5 3. Secured Creditor is informed and believes, and, based upon such information and belief,
6 alleges that title to the subject property is currently vested in the name of Debtor and that the Debtor is
7 in default of the loan obligations.

8 4. Prior to filing this case, the Debtor filed additional cases within a one year period as
9 follows:

10 (a) **Case No. 10-32157, filed November 24, 2010 in the District of Nevada, which was
Dismissed on January 21, 2011.**

11 (b) **Case No. 11-12465, filed February 24, 2011 in the District of Nevada, which was
Dismissed on May 4, 2011.**

12 5. Secured Creditor requests that the Court enter an Order confirming that there is no
13 Automatic Stay affecting Secured Creditor with respect to the Debtor.

14 6. Bankruptcy Code Section 362 (4)(A)(i) and (ii) states as follows:

15
16 If a single or joint case is filed by or against a debtor who is an individual under this title,
17 and if 2 or more single or joint cases of the debtor were pending within the previous year
18 but were dismissed, other than a case re-filed under section 707 (b), the stay under
19 subsection (a) **shall not go into effect upon the filing of the later case; and**
(ii) on request of a party in interest, the court shall promptly enter an order
confirming that no stay is in effect; (emphasis added.)

20 7. In addition, there is no stay as to the estate and/or trustee. See In re Reswick, 446 B.R.
21 362 (9th Cir.BAP 2011).

22 8. As stated above, Debtor was a Debtor in two (2) prior or more cases pending within a
23 preceding one year period of time prior to the institution of the present case, and that those prior cases
24 were dismissed.
25
26

1 9. Secured Creditor respectfully requests an order from the Court confirming that the
2 Automatic Stay never arose as to Secured Creditor, and that Secured Creditor may proceed with
3 executing upon its security interest in the subject property described herein.
4

5 WHEREFORE, for all of the foregoing reasons, Secured Creditor, Wells Fargo Bank, N.A.,
6 requests the Court to enter an Order confirming that the Automatic Stay has never arisen, with respect
7 to the Debtor and the subject property described in this motion.

8 Respectfully submitted, this _____ day of _____ 2011.
9

10 **TIFFANY & BOSCO, P.A**

11 By:  Gregory L. Wilde, Esq

12 **GREGORY L. WILDE, ESQ.**

13 Attorney for Secured Creditor

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In Re:

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CERTIFICATE OF SERVICE OF EX-PARTE
APPLICATION FOR AN ORDER PURSUANT TO 362(4)(A)(i) and (ii)

1. On 6-14-11 I served the following document(s):

NOTICE AND MOTION FOR RELIEF FROM AUTOMATIC STAY

2. I served the above-named document(s) by the following means to the persons as listed below:

X a. ECF System

Rick A. Yarnall
ecfmail@lasvegas13.com
Trustee

X b. United States mail, postage fully prepaid:

Artemio Avila
3980 Timberlake Dr.
Las Vegas, NV 89115
Debtor

☐ **c. Personal Service** (List persons and addresses. Attach additional paper if necessary)

I personally delivered the document(s) to the persons at these addresses:

☐ 1. For a party represented by an attorney, delivery was made by handing the document(s) to the attorney's office with a clerk or other person in charge, or if no one is charge by leaving the document(s) in a conspicuous place in the office.

N/A

☐ 2. For a party, delivery was made by handing the document(s) to the party or by leaving the document(s) at the person's dwelling house or usual place of abode with someone of suitable age and discretion residing there. N/A

☐ **d. By direct mail**

Based upon the written assignment of the parties to accept service by email or a court order. I caused the document(s) to be sent to the persons at the mail addresses listed below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

☐ **e. By fax transmission**

Based upon the written assignment of the parties to accept service by fax transmission or a court order. I faxed the document(s) to the persons at the fax numbers listed below. No error was reported by the fax machine that I used. A copy of the record of the fax transmission is attached.

☐ **f. By messenger**

I served the document(s) by placing them in an envelope or package addressed to the persons at the addresses listed below and providing them to a messenger for service.

1 I declare under penalty of perjury that the foregoing is true and correct.

2 DATED this 14th day of June 2011.

3
4 By: A handwritten signature in black ink, consisting of a series of loops and strokes, is written over a horizontal line.